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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/711,577	11/13/2000	John Calce	VIZR.10001NP	7169

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DALLAS, TX 75254

EXAMINER

TRAN, HAI

ART UNIT	PAPER NUMBER
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3694

MAIL DATE	DELIVERY MODE
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12/13/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/711,577

Applicant(s)

CALCE ET AL.

Examiner

Hai Tran

Art Unit

3694

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 and 26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 and 26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received:
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 29, 2007 has been entered.
2. This is the communication in response to the Remarks and Request for Continued Examination filed by the Applicant on October 29, 2007, titled: "Employee Investment System".
3. Claims 1-20 and 26 are pending in this application and have been examined. Claims 20-25 have been cancelled.
4. **Note:** In the Applicant's Remarks, filed on 10/29/2007, first page, third paragraph, Applicant states that "Claims 20-25 stand rejected as unpatentable over Gilbert in view of Henderson" is incorrect because these claims have already been cancelled and are withdrawn from further prosecution.

Previous Claim Rejections - 35 USC § 112

5. Applicant has amended claims 1, 11, and 26 for the 112, second paragraph rejections. The rejection is withdrawn.

New Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. More specifically,

8. The claims recite the phrase "credit / debit" is unclear because the "/" can mean "and" or "or". For the examination purpose, the Examiner interprets it as "credit and debit". Appropriate correction is required.

Response to Arguments

9. Applicant's arguments with respect to claims 1-20 and 26 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11. Claims 1, 3, 5, 11, 13, 15, and 26 are rejected under 35 U.S.C. 102(e) as being anticipated by Kahn et al. (U.S. Patent No. 6,401,079) ("Kahn").

Examiner's Note: Examiner has cited particular columns and line numbers in the references as applied to the claims for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

12. **With respect to claims 1 and 11**, Kahn teaches a system and method comprising:

receiving information regarding sales and credit/debit gratuities for each participating employee of an employer (see col. 5, lines 41-46, col. 15, lines 45-4 of col. 16);

calculating settlement amounts for transfer between the employer and employees according to the information regarding sales and credit/debit gratuities and predefined preferences for withholding investment (see col. 16, lines 5-31, specially where it says "(4) calculation of extra income, i.e., non-timesheet income such as bonuses, commissions, tips, vacation pay, benefit accrual, etc."); and

generating an investment database of investment amounts associated with the employees (see figure 2/element 50 and description);

receiving said investment database (see figure 3/element 1110 and description);
and

coordinating investment of said investment amounts with one or more investment providers (see figure 3/element 1113 and description).

13. **With respect to claims 3 and 13**, Kahn teaches the system and method comprising: receives said investment database and generates a net investment amount to be credited to accounts of said employees (see figure 3/elements 50, 1100, 1090, 1113; col. 18, lines 24-67).

14. **With respect to claims 5 and 15**, Kahn teaches the system and method wherein said account manager communicates said net investment amount to a financial institution associated by the employer for transferring money in the value of said net investment amount to one or more investment providers (see figure 3/element 1113 and description).

15. **With respect to claim 26**, the limitations in this claim comprise the exact same steps as in claim 1 and 10 with the exception of commissions. Kahn teaches such feature as described at (see col. 15, lines 39-23 of col. 18, figure 2 where it says "(4) calculation of extra income, i.e., non-timesheet income such as bonuses, commissions, tips, vacation pay, benefit accrual, etc.").

Claim Rejections - 35 USC § 103

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claims 2 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kahn in view of Meyer (U.S. Patent No. 5,933,812) ("Meyer").

18. **With respect to claims 2 and 12**, Kahn does not teach multiple point of sale devices for receiving the sales, gratuity and investment preference information at respective business locations and generating a location-specific investment database; and a main processor for consolidating said location-specific investment databases.

19. However, Meyer teaches point-of-sale devices that maintain gratuity information at (col. 3, lines 50-65) and in detail at (col. 7, lines 37-47 of col. 9). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teaching of Kahn, relating to a web-based system and method for managing employee payroll and benefit plans, with the teachings of Meyer, relating to receiving gratuity information at POS devices integrated into a network that maintains a totality of information. The motivation is to provide employers and employees with additional flexibility and control over the payroll process as described in Kahn at (col. 6, lines 24-31). It is necessary to maintain the information in a central database at a central system and Kahn certainly has the capability for doing so.

20. Claims 4, 6-9, 14, and 16-19 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Kahn in view of Gilbert et al. (U.S. Patent No. 6,041,313) ("Gilbert").

21. **With respect to claims 4 and 14**, Kahn teaches that investment providers are provided to manage employees' investments (see figure 3/element 1113 and

description), but it does not expressly discuss that a fee is charged. However, Gilbert teaches that:

a 401k system which includes financial investment providers for managing 401k plans and a fees is charged (see col. 1, lines 33-50);

With respect to claims 6-9, and 16-19, Gilbert teaches that:

wherein said account manager transfers information to said one or more investment providers specifying how the money is allocated between the employees (see col. 8, lines 11-15, col. 9, lines 16-18);

wherein said account manager receives money in the value of said net investment amount from said financial institution (see col. 8, lines 56-60);

wherein said account manager transfers said money to one or more of the investment providers (see col. 8, lines 56-60);

wherein said account manager transfers information to said one or more investment providers specifying how the money is allocated between the employees (see col. 8, lines 11-15, col. 9, lines 16-18);

22. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Kahn, relating to a web-based system and method for managing employee payroll and benefit plans, with the teachings of Gilbert, relating to a method and system for managing employee 401k accounts. The motivation is to provide employers and employees with additional flexibility and control over the payroll process as described in Kahn at (col. 6, lines 24-31).

23. Claims 10 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kahn in view of Henderson et al. (U.S. Patent Application Publication No. 2001/0014873) ("Henderson").

24. **With respect to claims 10 and 20**, Kahn does not expressly teach such feature. However, Henderson teaches that 401k's are portable and can be tracked from employer to employer. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Kahn, relating to a web-based system and method for managing employee payroll and benefit plans, with the teachings of Henderson, relating to portability and transferring an account of an employee to a new employer. The motivation is to provide employers and employees with additional flexibility and control over the payroll process as described in Kahn at (col. 6, lines 24-31).

Conclusion

25. Claims 1-20 and 26 are rejected.

26. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

27. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai Tran whose telephone number is (571) 272-7364. The examiner can normally be reached on M-F, 9-4 PM.

28. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James P. Trammell can be reached on (571) 272-6712. The fax phone

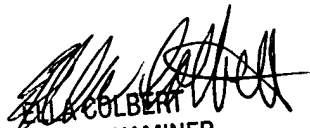
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number for the organization where this application or proceeding is assigned is 571-273-8300.

29. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

HT


E. A. COLBERT
PRIMARY EXAMINER